IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.97 OF 2005

Neeta Yadav @ Anita Rajkumar Yadav. ..Applicant.

V/s.

The State of Maharashtra. ..Respondent.

Mr.Vijay Hiremath for applicant.

Mr.Y.S.Shinde, APP for State.

CORAM: A.M.KHANWILKAR,J

DATE : DECEMBER 1, 2005.

P.C. :

1. Heard counsel for the parties.

2. Rule. Rule made returnable forthwith by consent.

3. Mr. Shinde, APP waives notice for respondent State.

4. As short question is involved petition taken up for final disposal forthwith by consent.

5. This revision application takes exception to the order passed by the Sessions Judge, Pune dated 16th February, 2005 below Exh.4 in S.C. No.431 of

2004. The said application was filed for discharge of accused No.2. While disposing of the said application, the reason mentioned by the Sessions Court is that the applicant accused No.2 is wife of accused No.1 and it is prosecution case that both have committed crime in question which is punishable under section 326, 379 r/w 34 of the Indian Penal Code. The Lower court has then observed that the although the name of accused No.2 applicant herein does not appear in the FIR however, during the investigation, involvement of accused No.2 applicant herein has been revealed. The statement of witness who purchased the gold chain from the accused shows involvement of both the accused. The lower court has further observed that recovery panchanama under section 27 of the Indian Evidence Act shows involvement of accused No.2 applicant herein alongwith the accused No.1. It is on the above basis the court proceeded to observe that prima facie case is made out by the prosecution on the basis of evidence on record for which reason it was not a case for discharge.

6. With the assistance of the counsel appearing for the parties, I have gone through the record produced before me. The learned APP fairly states

that only evidence so as to indicate complicity of the applicant accused No.2 is the statement of co-accused at page 24 and another statement of witness Piyush Lalit Jain at page 27 of the paper book. He fairly accepts that there is no other evidence on record to even remotely suggest the involvement of the applicant accused No.2. That leaves us to consider whether the material relied upon by the prosecution is sufficient to frame charge against the applicant/accsued No.2 for the alleged offence. In so far as the statement of co-accused is concerned, it is well settled that that by itself cannot be the basis to proceed against the co-accused unless the statement is corroborated. In any case, it is not a confessional statement but the statement made to the investigating officer pursuant to which recovery of gold chain in question has been effected. This statement therefore, will be of no avail even if, the said statement is accepted as it is. It merely indicates that the co-accused revealed to the Investigating Officer as to the place where the chain in question was sold by him to the shop keeper. That cannot be the basis to involve the applicant/accused No.2 much less to suggest complicity of the applicant in the commission of the alleged offence.

7. The second statement as mentioned earlier, is one of Piyush Lalit Jain. He has merely stated that accused No.1 came to his shop alongwith one lady and disposed of gold chain in question to him mentioning that he was in dire need of money as his wife is unwell and was therefore, required to go by train to Nagpur immediately. The fact remains that the lady who accompanied the accused No.1 to the shop of Piyush Lalit Jain has not been identified. There is no evidence to suggest that the applicant was the same lady who had accompanied the accused No.1 to the shop of Piyush Lalit Jain. Even assuming that the identity of the applicant was to be established as having accompanied the accused No.1 to the shop of Piyush Lalit, the fact remains that the only role attributed to that lady is that she was present alongwith the Accused No.1 in the shop when the accused No.1 mentioned to the shop keeper about her illness and she did not respond. Such evidence in my opinion, will not indicate complicity of the lady in the commission of the crime in which both the accused have been tried.

8. Suffice it to observe that none of the above statements will be sufficient to frame charge against the applicant accused No.2. There is one more

evidence which the learned APP intended to rely, namely, that Piyush Lalit Jain has identified photograph of accused No.1. Once again, that piece of evidence will be of no consequence to frame charge against the applicant/accused No.2. Accordingly, this petition should succeed.

9. The revision application is made absolute in terms of prayer clause (a) and (b).

10. The trial Court to proceed with the trial against the accused No.1 in accordance with the law, uninfluenced by any of the observations made in this order.